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Supreme Court, U.S.
FILED

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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

Jane Roe, II,

Petitioner,

v.

Aware Woman Center For Choice, Inc., a Florida corporation, Edward W. Windle, Jr., Patricia B. Windle, and William P. Egherman, M.D.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Is the issue "May a victim of an incomplete forced abortion sue the clinic for violation of the Freedom of Access to Clinic Entrances Act without revealing her real name to the public?" of such imperative importance as to justify deviation from normal appellate practice and to require immediate determination in this Court?

2. Is the issue "Was a cause of action under F.A.C.E. sufficiently pleaded where the complaint alleges the intent to violently obstruct an attempted-forced-abortion victim from leaving the clinic thus interfering with her attempt to get reproductive health services at another facility?" of such imperative importance it justifies deviation from normal appellate practice and requires immediate determination in this Court?

PARTIES TO THE PROCEEDING

"Petitioner"

Jane Roe, II

"Respondents"

Aware Woman Center For Choice, Inc., a Florida corporation, Edward W. Windle, Jr., Patricia B. Windle and William P. Egherman, M.D.

NOTE TO THE UNITED STATES SUPREME COURT ABOUT RELATED ELEVENTH CIRCUIT CASES:*

Prospective Petitioners: Ray Sienkiewicz of *Sienkiewicz v. McDougall*, and *Sienkiewicz v. Hart, et al.*, U.S. Court of Appeals No's: 00-12634-II, 00-13805-II, and 00-14228-FF, F.A.C.E. actions for intimidating pro-life counselors with problems of judicial impropriety. Meredith T. Raney, Jr. in *Raney v. City of Melbourne* U.S. Court of Appeals No.: 00-11403-B. F.A.C.E. corollary to *Raney v. Aware Woman.*

Prospective Respondents: John McDougall in *Sienkiewicz v. McDougall* (1 and 2). Larry Hart, Janet Reno, William Clinton, Charles Wilson (of the Eleventh Circuit) and Jill Babyack in *Sienkiewicz v. Hart*. City of Melbourne, Florida in *Raney v. City of Melbourne.*

*The Petition For Writ of Certiorari has already been filed for *Raney v. Aware Woman Center For Choice, Inc, et al.*, 224 F.3d 1266 (11th Cir. 2000).

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First Reason: The issue, "May a victim of an incomplete forced abortion sue the clinic for violation of the Freedom of Access to Clinic Entrances Act without revealing her real name to the public?" is of such imperative importance that it justifies deviation from normal appellate practice and to require immediate deter-

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Second Reason: The issue "Was a cause of action under F.A.C.E. sufficiently pleaded where the complaint alleges the intent to violently obstruct an attempted-forced-abortion victim from leaving the clinic thus interfering with her attempt to get reproductive health services at another facility?" is of such imperative importance it justifies deviation from normal appellate practice and requires immediate determination in this Court. 5

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28 U.S.C. §1391(b). 1

28 U.S.C. §2101(e). 2

Petitioner, Jane Roe, II, respectfully requests that a writ of certiorari be issued to review a case in the United States Circuit Court, Eleventh Circuit.

OPINIONS BELOW

The opinion of the District Court in *Jane Roe, II, v.. Aware Woman Center For Choice, Inc., et al.*, Case No.:99-850-CV-19-A, is shown as Appendix A. At this time, there is no opinion from the United States Court of Appeals, Eleventh Circuit.

STATEMENT OF JURISDICTION

Jane Roe, II filed an action for violation of her civil rights under 18 U.S.C. §248 (Freedom of Access to Clinic Entrances Act) in U.S. District Court, Middle District of Florida, Orlando Division pursuant to 28 U.S.C.§1391(b) because the claim arose in that district and also because the defendants reside in that district. There is federal jurisdiction because her claim arises under the laws of the United States according to 28 U.S.C. §1331. Additionally, since this is an action to recover damages under an Act of Congress providing for the protection of civil rights, jurisdiction was proper in the district court, under 28 U.S.C. §1343(a)(4).

An appeal was taken to the United States Court of Appeals, Eleventh Circuit, under the collateral appeal doctrine as reviewed in *Mitchell v. Forsyth*, 105 S.Ct. 2806 (1985), and first approved in *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541, 69 S.Ct. 1221, 93 L.Ed.1528 (1949), as an exception to 28 U.S.C. §1291.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). Because judgment has not yet been rendered in the Court of Appeals, Jane Roe, II relies also on 28 U.S.C. § 2101(e) for jurisdiction.

STATUTORY PROVISIONS INVOLVED

This case involves the federal statute called Freedom of Access to Clinic Entrances Act, (F.A.C.E.) 18 U.S.C.§ 248, which states in pertinent part:

> (a) **Prohibited activities.** - Whoever -
>
> **(1)** by force or threat of force or by physical obstruction, intentionally injures, intimidates or interferes with or attempts to injure, intimidate or interfere with any person because that person is or has been, or in order to intimidate such person or any other person or any class of persons from, obtaining or providing reproductive health services;
>
> (c) **Civil remedies.** -
>
> **(1) Right of action**.-
>
> **(A) In general.**-Any person aggrieved by reason of the conduct prohibited by subsection (a) may commence a civil action for the relief set forth in subparagraph (B), except that such an action may be brought under subsection (a)(1) only by a person involved in providing or seeking to provide, or obtaining or seeking to obtain, services in a facility that provides reproductive health services . . .
>
> **(e) Definitions.**- As used in this section:
>
> **(1) Facility.**- The term "facility" includes a hospital, clinic, physician's office, or other facility that provides reproductive health

services, and includes the building or structure in which the facility is located.

(2) Interfere with. - The term "interfere with" means to restrict a person's freedom of movement.

(4) Physical obstruction. - The term "physical obstruction" means rendering impassible ingress to or egress from a facility that provides reproductive health services . . .

(5) Reproductive health services.- The term "reproductive health services" means reproductive health services provided in a hospital, clinic, physician's office, or other facility, and includes medical, surgical, counselling or referral services relating to the human reproductive system, including services relating to pregnancy or the termination of a pregnancy.

STATEMENT OF THE CASE

A. Background

The abortion clinic at 1564 Dixie Way received a great deal of notoriety in Melbourne, Florida when the United States Supreme Court approved a "buffer zone" injunction in its favor in *Madsen v. Women's Health Center, Inc.*, 114 S.Ct. 2516 (1994).

The local police thereafter were most subservient and took part in a program effective at removing all persons not specifically approved by the abortion clinic from the buffer zone sidewalk. The *personae non grata* included pro-life

referral counselors with up-to-date information about the hazards at that particular clinic and about alternative resources for pregnant women in the immediate area.

While Jane Roe, II had been a customer of this particular clinic before, she was not warned of its post-*Madsen* assembly line procedures and the increasing number of serious injuries to its female patients. Un-warned, Jane Roe, II did not learn of the new, brutal practices until it was too late. She was pinned violently to the table by four assistants after ordering the abortionist to stop; he then proceeded to jab through her vagina, severely slashing her uterus and colon, and killing - but not removing the unborn child - in the process.

After some delay, a rescue squad was permitted to take Jane Roe, II to an emergency room where she underwent major surgery and where the dead child was removed from her uterus.

B. The Proceedings Below.

Using the fictitious name of Jane Roe, II the Petitioner sued William P. Egherman, M.D., Aware Woman Center For Choice, Inc. and its owners and operators (jointly called Aware Woman) .for a violation of Freedom of Access to Clinic Entrances Act (F.A.C.E.). She was unlawfully and forcefully prevented from exiting the abortion clinic at 1564 Dixie Way, Melbourne, Florida in her attempt to avoid a brutal, life-threatening abortion at Aware Woman and was physically obstructed because she wanted to obtain other reproductive services; not only those of the rescue squad there at Aware Woman, but also those at the local hospital emergency room.

Jane Roe, II filed her Complaint in the Middle District of Florida, Orlando Division. Aware Woman responded with

motions to dismiss the Complaint.

Later, at the case management meetings, Aware Woman objected to Jane Roe, II's proceeding anonymously, although they admitted knowing her real identity.

As a result of this objection, a case management hearing was held by the Magistrate Judge who directed Jane Roe, II to file a motion to proceed anonymously; she complied with this instruction.

The District Judge thereafter entered an order dismissing the Complaint, with conditional leave to file an amended complaint, and denied the motion to proceed anonymously. The condition for amendment: forfeiture of anonymity. Notice of appeal was then timely filed.

After all briefs had been filed with the U.S. Court of Appeals, Eleventh Circuit, oral argument was set for August 31, 2000. Argument was then postponed until November 3, 2000, when all parties hereto addressed the panel of the circuit court. No decision has been received at this time.

This Petition is thus filed more than three months after appellate oral argument.

REASONS FOR GRANTING THE WRIT

I

The Petition should be granted because the issue, "May a victim of an incomplete forced abortion sue the clinic for violation of Freedom of Access to Clinic Entrances Act without revealing her real name to the public?" is of such imperative importance it justifies deviation from normal appellate practice and requires immediate determination in this Court.

To the best of our knowledge, there is not a single case in which a federal judge has required that a woman who sought or obtained an abortion must forfeit her anonymity in order to obtain justice by way of civil litigation - with one exception: the present case.

The need for protection of unsuspecting young women from the various dangers in abortion clinics grows more imperative. All across this land, as are seen in the related cases, the independent referral counselors have been unlawfully barred from the doorways of abortion clinics where they could warn girls about such mortal hazards. These violations have resulted in an unknown number of deaths and injuries. This case may well be representative of a nationwide plague of violence, violence which is rarely reported because of the doubly embarrassing nature of the incidents, and violence which is rarely punished.

The lack of prosecution for forced abortion is probably due to confusion about exactly what law is violated, to the unwillingness of the victim to come forward , and often because, as in Melbourne, Florida, the justice system has become so subservient to abortion clinics.

While the United States Supreme Court inadvertently placed Aware Woman on a pedestal in *Madsen v. Women's Health Center,Inc.*, 114 S.Ct. 2516 (1994), this Court has always been most plain when describing a woman's right to privacy in an abortion-setting: "The decision to terminate a pregnancy is an intensely private one that must be protected in a way that assures anonymity." *Thornburgh v. American College of Obst,*. 106 S.Ct. 2169 (1986) at page 2181.

The concept of privacy, and anonymity regarding the abortion dilemma, was also discussed by this Court in *Planned Parenthood v. Casey*, 112 S.Ct. 2791 (1992) at page

2832: "In all events, the identity of each woman who has had an abortion remains confidential."

This Court has also addressed the horrors visited upon a rape victim, when in *Coker v. Georgia*, 97 S.Ct. 2861 (1977), it stated at page 2869:

> It is highly reprehensible, both in a moral sense and in its almost total contempt for the personal integrity and autonomy of the female victim and for the latter's privilege of choosing those with whom intimate relationships are to be established. Short of homicide, it is the "ultimate violation of self".

Jane Roe, II now understands that the term "forced abortion" could be substituted for the word "rape" in the *Coker* (*supra*) analysis without changing the description in any way.

Moreover, there has been no objection by the press or public to Jane Roe, II's anonymity, only that of the Aware Woman parties. Still it is useful to visit this Court's decision in *Richmond Newspapers v. Virginia*, 448 U.S. 555, 100 S.Ct. 2814, which concerned the right to a public criminal trial. In discussing possible closure of trials, this Court stated, "All of the alternatives admittedly present difficulties for trial courts, but none of the factors relied on here was beyond the realm of the manageable". 65 L.Ed.2d at 992. So it is in *Jane Roe, II*.

This Court has steadfastly proclaimed its concern for women's lives and health in abortion cases from *Roe v. Wade*, 35 L.Ed.2d 147(1973), and *Doe v. Bolton*, 410 U.S.179(1973) to *Stenberg v. Carhart*, 147 L.Ed.2d 743(2000), all the while holding that reproductive choices are options derived from a woman's basic right to privacy, privacy which is obliterated if not protected by anonymity.

II

The Petition should be granted because the issue, "Was a cause of action under F.A.C.E. sufficiently pleaded where the complaint alleges the intent to violently obstruct an attempted-forced-abortion victim from leaving the clinic thus interfering with her attempt to get reproductive health services at another facility?" is of such imperative importance it justifies deviation from normal appellate practice and requires immediate determination in this Court.

There is no doubt that effective use of F.A.C.E. by young women seeking reproductive health services is essential to protect them from violence and interference. It should not matter to the courts whether the violence emanates from pro-life sources or from pro-abortion sources. Unfortunately, this is not true.

A reading of the trial and appellate orders in the related cases, and the district judge's decision here, shows a partisan inclination to protect the abortion industry at the expense of young women and their benefactors: facts are misstated and the law, especially F.A.C.E., is twisted and misconstrued.

For example, a court of appeals discussed the motive requirement of F.A.C.E. as follows:

> FACE's motive requirement does not discriminate against speech or conduct that expresses an abortion-related message. FACE would, for example, apply to anyone who blockades a clinic to prevent a woman from getting an abortion - - - even if the workers were carrying signs that said "We are underpaid!" rather than "Abortion is wrong!" - - - Congress enacted

FACE to prohibit conduct that interferes with the ability of women to obtain abortions. *U.S. v. Dinwiddie*, 76 F.3d 913 (8th Cir. 1996) at page 923.

Jane Roe, II respectfully suggests to the Court that F.A.C.E. also protects women from conduct which interferes with their right not to choose abortion.

Jane Roe, II has stated in her complaint how at the beginning of the abortion, she knew that it was being done incorrectly. She demanded that the abortionist stop. Instead, she was violently pinned to the table by four assistants while the doctor tried to force her to undergo the abortion. Further, the record shows that while he succeeded in killing the unborn child, the abortionist did not remove it and that Jane Roe, II's uterus and colon were severely slashed.

Whether this savage treatment of Jane Roe, II flows from a sadistic nature, from greed or some perversity, she does not know. She does know that the Aware Woman people intentionally prevented her from receiving independent help from the rescue squad there at Aware Woman and they obstructed her exit from Aware Woman and entry to another facility, seeking other necessary reproductive health services. These services included removal of the dead baby and massive internal surgery. Nothing more should be required to show a most serious F.A.C.E. violation of Jane Roe, II's civil rights.

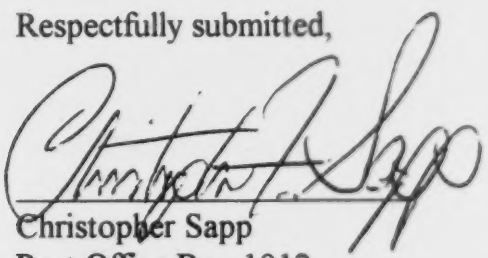
The Complaint passes the test in *Conley v. Gibson*, 355 U.S. 41, 78 S.Ct. 99, 2 L.Ed.2d 80(1957): it states facts on which relief can be granted. However, should this Court determine that amendment of the Complaint is necessary, then Jane Roe, II suggests that there should be no condition requiring her to first surrender her privacy/anonymity as the ticket price for entry into the legal arena.

It is critical that the young women of this nation be allowed the liberal use of F.A.C.E. to protect them from violence in abortion clinics, regardless of the source of such danger.

CONCLUSION

Jane Roe, II, respectfully requests that this Court grant a writ of certiorari in order to protect women's right to privacy and to safeguard the millions of pregnant girls and young women who, when dealing with crisis pregnancies, need protection from violence. The United States Supreme Court should review this case because it is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this Court.

Respectfully submitted,



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APPENDIX A

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO, DIVISION

Case No. 6: 99-CV-850-ORL-19A
(Filed: July 9, 1999)

JANE ROE, II,
Plaintiff,
v.

AWARE WOMAN CENTER
FOR CHOICE, INC.,
EDWARD W. WINDLE, JR.,
PATRICIA B. WINDLE, and
WILLIAM PHILIP EGHERMAN, M.D.,
Defendants.
_____/

ORDER

This cause comes before the Court on the following matters:

1) Defendant William P. Egherman, M.D.'s Motion To Dismiss (Doc. No. 8, filed August 3, 1999); Defendant William P. Egherman, M.D.'s Memorandum of Law in Support of Motion to Dismiss (Doc. No. 9, filed August 3, 1999); Plaintiff, Jane Roe, II's Response to Defendant William P. Egherman, M.D.'s Motion to Dismiss (Doc. No. 17, filed August 23, 1999);

2) Defendants, Aware Woman Center for Choice,

Inc., Edward W. Windle, Jr., Patricia B. Windle, and William P. Egherman, M.D.'s Motion to Dismiss Complaint (Doc. No. 12, filed August 16, 1999); Defendants' Memorandum of Law in Support of Motion to Dismiss Complaint (Doc. No. 13, filed August 16, 1999); Plaintiff, Jane Roe, II's Response to Defendants' Motion to Dismiss Complaint (Doc. No. 19, filed September 7, 1999);

3) Defendants, Aware Woman Center For Choice, Inc., Edward W. Windle, Jr., Patricia B. Windle, and William P. Egherman, M.D.'s Motion to Strike (Doc. No. 14, filed August 16, 1999); Defendants' Memorandum of Law in Support of Motion to Strike (Doc. No. 15, filed August 16, 1999); Plaintiff, Jane Roe, II's Response to Defendants' Motion to Strike (Doc. No. 18, filed September 7, 1999);

4) Plaintiff, Jane Roe, II's Motion to Proceed Anonymously Together with Supporting Memorandum (Doc. No. 24, filed November 12, 1999); Defendant William P. Egherman, M.D.'s Memorandum of Law in Opposition to Plaintiff's Motion to Proceed Anonymously (Doc. No. 26, filed December 1, 1999); and Defendants, Aware Woman Center For Choice, Inc., Edward W. Windle, Jr., and Patricia B. Windle's Memorandum of Law in Opposition to Plaintiff's Motion to Proceed Anonymously (Doc. No. 25, filed November 22, 1999).

I. BACKGROUND

On March 29, 1997, Plaintiff went to Aware Woman Center For Choice, Inc. (The "Center") to obtain an abortion.[1] See Doc. No. 1. During the procedure Plaintiff experienced

[1]An abortion, performed "in a facility" is considered a "reproductive health service" under FACE. See 18 U.S.C. § 248 (e)(5).

severe pain and made repeated requests that the Aware employees call an ambulance "to take her to the emergency room at the local hospital."[2] Id. At ¶¶ 17, 20. Plaintiff alleges that, before the ambulance arrived, the Defendants held her down, preventing her from leaving the Center. See id. Plaintiff concludes that Defendant's actions during the abortion amount to a violation of the Freedom of Access to Clinic Entrances Act of 1994, 18 U.S.C. §248 ("FACE"). Id.

All four Defendants, William P. Egherman, M.D., Aware Woman Center For Choice, Inc. ("Aware"), Edward W. Windle, Jr., and Patricia B. Windle, have moved to dismiss Plaintiff's complaint. The Defendants contend that Plaintiff has not and cannot allege a violation of FACE based on the events of March 29, 1997. In addition, Defendants object to Plaintiff bringing her claim anonymously.

II. LEGAL STANDARD

For purposes of a motion to dismiss, this Court must view the allegations of the complaint in the light most favorable to the plaintiff, consider the allegations of the complaint as true, and accept all reasonable inferences therefrom. Jackson v. Okaloosa County, Fla., 21 F.3d 1532, 1534 (11th Cir. 1994); Scheuer v. Rhodes, 416 U.S. 232, 236 (1974). Furthermore, this Court must limit its consideration to the pleadings and written instruments attached as exhibits thereto. See Fed. R. Civ.P. 10 (c); GSW, Inc. v. Long County, Ga., 999 F. 2d 1508, 1510 (11th Cir. 1993). A complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove

[2]The emergency room of a local hospital would fall under the definition of a "facility." See 18 U.S.C. § 248(e) (1).

no set of facts that would entitle her to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957); Hunnings v. Texaco, Inc., 29 F.3d 1480, 1483 (11th Cir. 1994).

Conclusory allegations and unwarranted factual deductions are not accepted as true. Gersten v. Rundle, 833 F.Supp. 906, 910 (S.D. Fla. 1993) (citing Associated Builders, Inc. v. Alabama Power Co., 505 F.2d 97, 100 (5th Cir. 1974)). "However, when on the basis of a dispositive issue of law, no construction of the factual allegations of the complaint will support the cause of action, dismissal of the complaint is appropriate." See Executive 100, Inc. v. Martin County, 922 F.2d 1536 (11th Cir. 1991).

III. ANALYSIS

The Defendants argue that Plaintiff's complaint should be dismissed because it "fails outside the plain language and construction of (FACE) and therefore, Plaintiff is not entitled to pursue a civil remedy under the Act." Doc. No. 12, at ¶¶ 4 & 5; see also (Doc. No. 8 at ¶¶ 4 & 5) (citing Cheffer v. Reno, 55 F.3d 1517, 1519 n.2 (11th Cir. 1995)). Defendants also contend that Plaintiff's complaint must be dismissed because it fails to allege that Plaintiff "was seeking to obtain reproductive service and was prevented from doing so by some person . . . . [nor does it allege] in any respect that any person or group *prevented* her from obtaining reproductive health services." (Doc. No. 9, at 4 & 2) (emphasis provided). [3]

In order to determine whether the Plaintiff has

[3]Plaintiff need not allege that she was actually prevented from obtaining reproductive health services in order to allege a cause of action under FACE. FACE plainly covers mere attempts to prevent persons from obtaining reproductive health services. See 18 U.S.C. §248 (a).

successfully alleged an action under FACE, the Court must first set forth the elements of a FACE claim. To discern the elements of this relatively new cause of action, the Court will look to the text of the statute, its legislative history, and relevant case law.[4]

A. FACE

FACE provides in relevant part:

> (a) Prohibited activities. - -Whoever-
> (1) by force or threat of force or by physical obstruction, intentionally injures, intimidates or interferes with or attempts to injure, intimidate or interfere with any person because that person is or has been, or in order to intimidate such person or any other person or any class of persons from, obtaining or providing reproductive health services;
>
> . . .
>
> shall be subject to the penalties provided in subsection (b) and the civil remedies provided in subsection (c) . . . .

The scope of the cause of action provided under sub-

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[4] The Court looks to cases which have applied FACE in a criminal and civil context because "[t]here is no indication in the statute that the elements of the prohibited activity" should differ. See 18 U.S.C. § 248; Greenhut v. Hand, 996 F.Supp. 372, 378, n. 4 (D.N.J. 1998).

section (c)[5] is clarified by the following definitions:

(1) Facility. - - The term "facility" includes a hospital, clinic, physician's office, or other facility that provides reproductive health services, and includes the building or structure in which the facility is located.

(2) Interfere with. - - The term "interfere with" means to restrict a person's freedom of movement.

(3) Intimidate. - - The term "intimidate" means to place a person in reasonable apprehension of bodily harm to him - - or herself or to another.

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[5]Subsection (c) provides in relevant part:

> (A) In general.- - Any person aggrieved by reason of the conduct prohibited by subsection (a) may commence a civil action for the relief set forth in subparagraph (B) except that such an action may be brought under subsection (a)(1) only by a person involved in providing or seeking to provide, or obtaining or seeking to obtain, services in a facility that provides reproductive health services. . .
>
> (B) Relief. - -In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief and compensatory and punitive damages, as well as the costs of suit and reasonable fees for attorneys and expert witnesses. With respect to compensatory damages, the plaintiff may elect, at any time prior to the rendering of final judgment, to recover, in lieu of actual damages, an award of statutory damages in the amount of $5,000 per violation.

18 U.S.C. §248 (c) (1).

(4) Physical obstruction. - -The term "physical obstruction" means rendering impassable ingress to or egress from a facility that provides reproductive health services, . . .or rendering passage to or from such a facility . . . unreasonably difficult or hazardous.

(5) Reproductive health services. - - The term "reproductive health services" means reproductive health services provided in a hospital, clinic, physicians office, or other facility, and includes medical, surgical, counseling or referral services relating to the human reproductive system, including services relating to pregnancy or the termination of a pregnancy.

18 U.S.C. §248(e).

Congress set forth its stated purpose in enacting FACE as follows:

> Pursuant to the affirmative power of Congress to enact this legislation under section 8 of article 1 of the Constitution, as well as under section 5 of the fourteenth amendment to the Constitution, it is the purpose of this Act [enacting this section and provisions set out as notes under this section] to protect and to promote the public safety and health and activities affecting interstate commerce by establishing Federal criminal penalties and civil remedies for certain violent, threatening, obstructive and destructive conduct that is intended to injure, intimidate or interfere with persons seeking to obtain or provide reproductive health services."

Section 2 of Pub.L. 103 - 259 (Congressional Statement of Purpose).

B. Elements

Although FACE is a relatively new statute and courts are just beginning to enunciate the elements of a civil action under the statute, at least three of the elements are well-settled.[6] See United States v. Wilson, 2 F. Supp.2d 1170, 1171 (E.D. Wisc. 1998). The first element is the defendant's act: the defendant must physically obstruct or attempt to obstruct a person's access to "a reproductive health facility." Id. The second element is the defendant's intent: the defendant must intend to "interfere with or [intend to] attempt [] to interfere with persons attempting to gain entrance or egress to [a facility]." Id. The third element is motive which requires that "the defendant's intentional interference . . . . with persons entering or exiting the clinic was done *for the express purpose of* preventing such persons from obtaining . . . reproductive health services." Id. (emphasis added).

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[6]Immediately after FACE was enacted, it was subjected to a flurry of challenges on various constitutional grounds. The courts faced with these cases reviewed the legislative history and text of the statute in great detail and opined on FACE's purpose and scope. See e.g., United States v. Soderna, 82 F.3d 1370 (7th Cir.), cert. denied, Hatch v. United States, 519 U.S. 1006 (1996); United States v. Dinwiddie, 76 F.3d 913 (8th Cir.), cert. denied, 519 U.S. 1043 (1996); United States v. Wilson, 73 F.3d 675 (7th Cir. 1995), cert. denied, 519 U.S. 806 (1996); Cheffer v. Reno, 55 F.3d 1517 (11th Cir. 1995); see also United States v. Gregg, 32 F.Supp.2d 151 (D.N.J. 1998); United States v. Scott, 958 F.Supp. 761 (D.Conn. 1997) ; United States v. Hill, 893 F.Supp. 1034 (N.D. Fla. 1994).

The Wilson court noted that the motive element is crucial to a cause of action under FACE, and it "makes the FACE law unique in that most crimes require only proof of an act and intent to so act. In contrast, FACE not only requires proof of the act and the intent, but also the requisite reason or motive for the intended action; here, to prevent the receipt or provision of reproductive health services." Id. at 1171-72.

The legislative history states that "FACE's motive requirement accomplishes . . . the perfectly constitutional task of filtering out conduct that Congress believes need not be covered by a federal statute." See H.R.Rep. No. 306, at 12; S.Rep. No. 117, at 24; see also Council for Life Coalition v. Reno, 856 F.Supp. 1422, 1427-28 (S.D. Cal. 1994) (holding that the inclusion of a motive element in an action under FACE does not violate the First Amendment). FACE's motive requirement targets specified conduct "while ensuring that FACE *does not federalize a slew of random crimes* that might occur in the vicinity of an abortion clinic." See United Stated v. Dinwiddle, 76 F. 3d 913, 922-23 (8th Cir.) (Holding that motive is an element of a FACE violation and comparing such motive requirement with the motive requirement imposed in Title VII causes of action) (emphasis added), cert. denied Dinwiddie v. United States, 519 U.S. 1043 (1996). Thus, it is clear that the motive requirement ensures that FACE will only be invoked to remedy "force, threats of force and physical obstruction . . .when such acts are intended to interfere with the right to obtain or provide reproductive health services.: See United States v. Scott, 958 F.Supp. 761, 775 (D.Conn. 1997) (holding that the motive element does not render FACE a content-based restriction on speech).

C. The Complaint

Plaintiff's allegation that Defendants prevented her egress from the Center, during the middle of an abortion procedure is insufficient to state a claim under FACE because

it fails to allege the requisite motive. Specifically, Plaintiff states that "Defendants violated (FACE) by preventing the egress of Plaintiff from (the Clinic) on March 29, 1997 when Defendants, and/or their employees, did unlawfully 'interfere with' [as defined by 18 U.S.C. §248(e)(2)], 'intimidate' [as defined by 18 U.S.C. §248(e)(3)], and use 'physical obstruction' [as defined by 18 U.S.C.§248(e)(4) to restrain Plaintiff and render impassable her desired egress from [the Clinic]." (Doc. No. 1, at ¶22).

Although Plaintiff has set forth facts which, viewed in the light most favorable to Plaintiff, may establish that Defendants prevented her egress from the Center; Plaintiff has failed to allege any fact which suggests that the Defendants prevented her egress in order to prevent Plaintiff from obtaining reproductive health services. The facts currently set forth by Plaintiff clearly fall into the slew of "random acts" which Congress did not intend to make subject to a federal statute. See Dinwiddie, 76 F. 3d at 922-23. Absent some allegation that the Defendants acted with the requisite intent and motive, Plaintiff's claim must fail.

IV. Anonymity

Plaintiff has moved to proceed anonymously in pursuing her FACE claim against Defendants. See (Doc. No. 24). Because Plaintiff is given leave to amend her Complaint to state a cause of action, the Court will consider Plaintiff's motion to proceed anonymously. Plaintiff argues that she is entitled to proceed anonymously because this is "an unusual situation in which the violence and abuse inflicted on the Plaintiff should be revealed to the public but the danger of harm to the Plaintiff and the sensitive and personal nature of the wrong require that her identity should not be disclosed publicly." Id. At ¶ 4.[7]

[7]The Court rejects Plaintiff's contention that she is entitled

Federal Rule of Procedure 10(a) requires that the title of a Complaint "include the names of all of the parties." The requirement that parties identify themselves when bringing an action in federal court is not lightly discarded because it is grounded in part on the constitutional concerns regarding the openness of judicial proceedings. Nonetheless, a party may proceed anonymously if the need for anonymity is sufficiently strong. See Doe v. Frank, 951 F.2d 320, 323 (11th Cir. 1992). For instance, a plaintiff may proceed anonymously where the plaintiff is in real danger of physically harm or where matters to be revealed during the case are of the "utmost intimacy." See id. at page 324.

The Court does not find that the "presumption of openness in judicial proceedings" is outweighed by a substantial privacy right in this case. See id. at 323. The decision to obtain an abortion and the facts surrounding an abortion would certainly be considered a private matter to anyone faced with such a decision. Nonetheless, absent some additional circumstances necessitating anonymity, the privacy surrounding an abortion procedure cannot be preserved in the face of the public's interest in open judicial proceedings and the defendant's right to know the plaintiff's identity. Plaintiff has provided no factual support for her assertion that she faces "additional harm" from Defendants were they to discover Plaintiff's identity. See (Doc. No. 24).

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to proceed anonymously under Florida statutory law. See (Doc. No. 24, at ¶5) (citing Florida Statute § 794.026 which protects the identity of sexual battery victims). The Court also finds that Plaintiff is not entitled to invoke the physician-patient privilege to prevent disclosure of her name in this suit against her physician. See id. At ¶ 9. Finally, the Court notes that there is no support for Plaintiff's contention that Defendants have waived their right to object to Plaintiff's anonymity. (Doc. No. 24, at ¶2).

V. CONCLUSION

For the foregoing reasons, the Court **RULES**:

1) Defendant William P. Egherman, M.D.'s Motion to Dismiss (Doc. No. 8, filed August 3, 1999) is **GRANTED**.

2) Defendants, Aware Woman Center for Choice, Inc., Edward W. Windle, Jr., Patricia B. Windle, and William P. Egherman, M.D.'s Motion to Dismiss Complaint (Doc. No. 12, filed August 16, 1999) is **GRANTED**.

3) Defendants, Aware Woman Center for Choice, Inc., Edward W. Windle, Jr., Patricia B. Windle, and William P. Egherman, M.D.'s Motion to Strike (Doc. No. 14, filed August 16, 1999) is **DENIED** as **MOOT**.[8]

4) Plaintiff, Jane Roe, II's Motion to Proceed Anonymously (Doc. No. 24, filed November 12, 1999) is **DENIED**.

Plaintiff's Complaint (Doc. No. 1) is **DISMISSED WITHOUT PREJUDICE**. The Plaintiff shall have ten days from the date of this Order to file an Amended Complaint. Failure to timely file an Amended Complaint that does not comply with the requirements of Federal Rule of Civil Procedure 10(a) will result in dismissal of the Complaint without further notice from the Court.

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[8]Although the Court does not reach the merits of Defendants' Motion to Strike, the Court does caution the Plaintiff to conform with Federal Rule of Procedure requiring complaints to contain a short and *plain* statement of the claim. See FED.R.CIV. P. 8 (a)(2).

DONE AND ORDERED at Orlando, Florida, this 3rd day of January, 2000.

/s/
PATRICIA C. FAWSETT
UNITED STATES DISTRICT JUDGE

Copies to:
All Counsel of Record